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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,664	03/15/2001	Roy P. Demott	2168A	5740

7590 08/26/2003
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Spartanburg, SC 29304

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p>09/809,664</p>	<p>Applicant(s)</p> <p>DEMOTT ET AL.</p>	
	<p>Examiner</p> <p>Jenna-Leigh Befumo</p>	<p>Art Unit</p> <p>1771</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-27,29,51-54,57-59 and 70-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-11,14,16-27,29,51-54,57-59 and 70-73 is/are rejected.
- 7) ☒ Claim(s) 12,13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on July 14, 2003, has been entered. Claims 7, 28, 30 – 50, 55, 56, 60 – 69, and 74 – 81 have been cancelled. Claims 1 – 6, 8, 11 – 16, 18 – 20, 22, 23, 26, 29, 51 – 54, 58, and 59 have been amended. Therefore, the pending claims are 1 – 6, 8 – 27, 29, 51 – 54, 57 – 59, and 70 – 73.
2. The rejections to claims 7, 28, 30 – 50, 55, 56, 60 – 69, and 74 – 81 are moot, since those claims were cancelled by the Amendment.
3. The Amendment is sufficient to overcome the 35 USC 112 rejections set forth in section 11 – 22 of the previous Office Action.
4. The 35 USC 102 rejections based on Nagahama et al. (5,524,317) are withdrawn since Nagahama et al. teaches that the polyester fabric layer is a tufted fabric with a knitted polyester backing. The current claim requires that the fabric layer consists essentially of a knitted polyester fabric which would exclude the tufted fabric taught by Nagahama et al. because of the tufted pile yarns added to the knitted polyester backing layer.
5. The USC 102 rejection based on Vinod (5,965,232) is withdrawn since Vinod teaches that the upper surface is liquid impervious, and hence Vinod teaches away from the liquid retaining fabric recited in claim 1.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1, 20, 21, 70, and 71 stand rejected under 35 U.S.C. 102(b) as being anticipated by Reeder et al. (5,262,092) for the reasons of record.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1 – 6, 8, 9, 11, 14, 18, 19, 21 – 27, 29, 57, and 70 – 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. (WO 96/32526), in view of Rock et al. (5,817,391) and Peterson (6,381,778).

Claims 1 – 4, 8, 9, 11, 14, 18, 19, 21 – 27, 29, 57, and 70 – 73 are rejected for the reasons of record. Claim 5 is now rejected since the rejection set forth in the previous Office Action set forth that the individual filaments in the yarns have a size of between 0.3 to 2.5 denier. Claim 6 is rejected since Rock et al. teaches that the yarn connecting the outer layers is made from a monofilament have a denier of 40 to 150 (column 2, lines 62 – 65)

10. Claim 10 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. in view of Rock et al. and Peterson as applied to claim 9 above, and in further view of Schuette et al. (5,725,951) for the reasons of record.

11. Claims 16, 17, 51 – 54, 58, and 59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. in view of Rock et al. and Peterson as applied to claims 1, 22, and 57 above, and further in view of Kaufman for the reasons of record.

Allowable Subject Matter

12. Claims 12, 13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter:
The prior art fails to teach or fairly suggest a rubber backing bonded to a fabric layer with raised

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and depressed portion with the claimed height different or surface area of the individual surface formations. Additionally, the prior art fails to teach that the surface formations are formed by projections on the underlying rubber backing layer.

Response to Arguments

14. Applicant's arguments filed July 14, 2003 have been fully considered but they are not persuasive. The Applicant argues that Reeder et al. fails to disclose a fluid retaining fabric layer (Amendment, page 9). First, it is noted that the claim currently recites that the fabric "is adapted to retain fluid therein". The claim fails to recite how the fabric is adapted and exactly what type of fluid is being retained. And, while polyester fabric is hydrophobic, and does not readily absorb water based liquids, polyester does easily absorb and retain fluids which are oil based. Thus, the fabric is adapted to retain oil-based fluids and grease therein. Therefore, Reeder et al. still reads on the claims as amended and the rejection is maintained.

15. The Applicant argues that the spacer fabric layer taught by Reeder et al. is a multi-fabric layer and would not read on the "single" fabric layer now recited by the Applicant (Amendment, page 11). However, the spacer fabric is considered to be a single fabric layer even though the fabric is described as having an upper layer and a lower layer since the layers are joined together by resilient yarns between the two layers. The spacer fabric is produced on a single knitting machine in a single process, so that all three layers are combined together at the time of knitting to form a finished fabric. Even if the layers were formed by knitting the outer layers and then bonding two separate layers together, the act of bonding the layers together would form a single fabric, with all layers working together to as a single layer. The term "single fabric layer" is not defined in the specification, and hence is interpreted based on the broadest meaning of the term. Therefore, the rejection is maintained.

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16. With respect to the Applicant's argument that there is no suggestion or motivation to combine the references (Amendment, pages 10 – 11), it is felt that the references themselves do provide sufficient motivation. First, with respect to Cooper et al, Rock et al, and Peterson all three references are drawn to composite bedding material. Peterson provides a teaching that a polymeric coating or a rubber layer are equivalent and either material can be used as a liquid impervious backing layer in bedding materials. Thus, it would have been obvious to one of ordinary skill in the art would to use either a polymeric material or a rubber material to form an impervious backing on bedding material. And not only is Rock et al. drawn to bedding material, but bedding material with a spacer fabric layer. Rock et al. discloses a spacer fabric which is more comfortable to the user by pulling liquid away from the fabric surface and having a plush surface which is soft and has a good hand. Thus, Rock et al. discloses a spacer fabric with improved properties and thus, provides motivation to replace the spacer fabric taught by Cooper et al. with the improved spacer fabric taught by Rock et al. It is unclear why the Applicant thinks motivation is lacking, since the Applicant does not disclose what specifically is missing from the references or why one of ordinary skill in the art would not combine the references. Hence, the Examiner feels that the references do provide sufficient motivation to combine the references. Thus, the rejections are maintained.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
August 14, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER